

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

STATE OF OKLAHOMA, ex rel, W.A. DREW
EDMONDSON, in his capacity as ATTORNEY
GENERAL OF THE STATE OF OKLAHOMA,
et al.,

Plaintiff,

v.

TYSON FOODS, INC., et al.,

Defendants.

Case No. 4:05-CV-329-JOE-SAJ

**DEFENDANTS' RESPONSE TO THE STATE OF OKLAHOMA'S REQUEST FOR
ORAL ARGUMENT ON DEFENDANTS' MOTIONS TO DISMISS**

COME NOW Defendants, Tyson Foods, Inc.; Tyson Poultry, Inc.; Tyson Chicken, Inc.; Cobb-Vantress, Inc.; Cal-Maine Foods, Inc.; Cal-Maine Farms, Inc.; Cargill, Inc.; Cargill Turkey Production, LLC.; George's, Inc.; George's Farms, Inc.; Peterson Farms, Inc.; Simmons Foods, Inc.; and Willow Brook Foods, Inc. (collectively, "Defendants"), pursuant to FED. R. CIV. P. 7 and LCvR7.1(e) and, by and through their attorneys, submit the following as their response to the *State of Oklahoma's Request for Oral Argument on Defendants' Motions to Dismiss*.

ARGUMENT

Plaintiffs have requested oral argument on seven (7) motions now pending before this Court. These motions request a wide range of relief, including dismissal of several of Plaintiffs' claims and a stay of proceedings pending appropriate regulatory action (*see* Docket Nos. 64, 65, 66, 67, and 75), and they raise complex issues of procedure, jurisdiction, federal pre-emption, and exhaustion of administrative remedies. *See id.* Given the complexity of these issues, the Parties have provided this Court with substantial briefs in support of their respective positions, and preparations for oral argument will likewise require a tremendous expenditure of time and effort by both the Parties and this Court.

The Defendants respectfully request that before this Court considers whether to hear oral argument on these complex motions, the Court first issue a ruling on Defendants' Motion to Stay Proceedings in this matter. *See* Defendants' Motion to Stay Proceedings and Integrated Opening Brief in Support and Request for Expedited Hearing ("Motion to Stay") (Docket No. 125). In their Motion to Stay, Defendants have asked this Court to enter an order staying all proceedings in this matter pending the outcome of *State of Arkansas v. State of Oklahoma*, an original action filed in the United States Supreme Court (the "Supreme Court Action"). The Supreme Court Action addresses many of the legal issues presented by Defendants' motions to dismiss. Therefore, the pendency of the Supreme Court Action militates in favor of this Court entering the stay requested by Defendants because the outcome of the Supreme Court Action may preclude Plaintiffs from pursuing all or a significant portion of their claims in this forum. *See* Defendants' Motion to Stay.

Ruling on Defendants' Motion to Stay before considering whether to hear oral argument on the Parties' other pending motions would serve the goal of judicial economy because, if this Court stays proceedings in this matter, adjudication of the motions may become permanently or temporarily unnecessary. Moreover, addressing Defendants' Motion to Stay before considering whether to hear oral argument on the other motions will not unreasonably delay proceedings because briefing is complete on Defendants' Motion to Stay and the matter is now ripe for review by this Court. *See* LCvR 7.1(h) and Docket Nos. 139 and 167.

If this Court decides not to delay consideration of Plaintiffs' request for oral argument, Defendants respectfully submit that oral argument may not be necessary in the interests of judicial economy. Plaintiffs suggest that oral argument would be "beneficial given the complexity of the legal issues being placed before the Court for resolution and the overarching

public import of the issues raised by this litigation.” See Request for Oral Argument at 2 (Docket No. 159). However, the Parties have cumulatively provided this Court with more than 200 pages of briefing materials in which the Parties have set forth arguments and authorities in support of their respective positions regarding these motions. (See Docket Nos. 53, 64, 65, 66, 67, 71, 75, 127, 128, 129, 130, 131, 133, 134, 142, 143, 144, 145, 146, and 149). Defendants submit that both the “legal issues being placed before the Court for resolution” and the “public import of the issues raised by this litigation” have been fully developed in the Parties’ respective briefs on this matter. However, if this Court has identified issues that have not been fully addressed by the Parties, or determined that oral argument would assist the Court with its deliberations, Defendants would welcome the opportunity to appear before this Court and present additional argument in support of their motions.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of December, 2005, I electronically transmitted the foregoing document to the Clerk of the Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants:

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